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## 8 Attorneys for Representative Plaintiff and the Plaintiff Class

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

14 JAMI ZUCCHERO, individually and on behalf of all others similarly situated,

Plaintiff,

16 | v.

17 | HEIRLOOM ROSES, INC.,

18 || Defendant.

**Case No. 4:22-cv-00068-KAW**

## CLASS ACTION

**[PROPOSED] ORDER AND JUDGMENT AS  
MODIFIED:**

- (1) GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT;
- (2) AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL; AND
- (3) AWARDING A SERVICE AWARD TO THE REPRESENTATIVE PLAINTIFF

Date: May 2, 2024

Time: 1:30 p.m.

**Judge: Hon. Kandis A. Westmore**

On March 18, 2024, Plaintiff Jami Zuccheri filed a motion for final approval of the class action settlement. (Pl.'s Mot., Dkt. No. 77.)

On May 2, 2024, the Court held a hearing, and, having carefully considered the briefs, argument of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS Plaintiff's Motion for Final Approval of Class Action Settlement, as set forth below.

## **FINDINGS**

Based on the oral and written argument and evidence presented in connection with the Motion, the Court makes the following findings:

1. All terms used herein shall have the same meaning as defined in the proposed Settlement Agreement (“Agreement”).

2. This Court has jurisdiction over the subject matter of the above-captioned litigation and over all Parties to this Litigation, including the Settlement Class.

## **Preliminary Approval of the Settlement**

3. On November 30, 2023, the Court granted preliminary approval of a class-wide settlement. (Dkt. No. 75.) At this same time, the Court approved certification of a provisional Settlement Class for settlement purposes only. *Id.* at 10.

## **Notice to the Plaintiff Class**

Settlement Administrator CPT Group (“CPT”) compiled a master list of 51,907 Settlement Class Members. (Decl. of Carole Thompson, “Thompson Decl.”, Dkt. No. 77-3 ¶ 6.) In compliance with the Preliminary Approval Order, the Class Notice was emailed to 47,588 the Settlement Class Members on or about December 22, 2023. (Thompson Decl. ¶ 8; Email Notice, Pl.’s Suppl. Br., Dkt. No. 81, Ex. A.) Emailing the Class Notice was the best notice practicable under the circumstances and was reasonably calculated to communicate actual notice of the Litigation and the proposed settlement to the Settlement Class. 377 emails bounced or were deemed undeliverable. (Thompson Decl. ¶ 8.) Also on December 22, 2023, CPT mailed the Postcard Notice to 4,319 Settlement Class Members who had a valid mailing address, but no valid email. (Thompson Decl. ¶ 9; 2d Suppl. Decl. of Carole Thompson, “2d Suppl. Thompson

1     Decl.," Dkt. No. 84 ¶ 7.) 377 email notices were undeliverable, so a Postcard Notice was sent to  
 2 those class members via first class mail using the mailing address available. (2d Suppl.  
 3 Thompson Decl. ¶ 6.) Thus, a total of 4,696 Class Members were sent a Postcard Notice. (2d  
 4 Suppl. Thompson Decl. ¶ 7.)

5       4. Under the terms of the settlement, only those individuals who experienced  
 6 unreimbursed, unauthorized or fraudulent charges or out of pocket expenses which [they] believe  
 7 in good faith were fairly traceable to the Data Security Incident" were eligible to file a claim. (See  
 8 Email Notice, Pl.'s Suppl. Br., Ex. A.) The deadline to submit a claim was March 21, 2024, and  
 9 the deadline to submit objections and requests for exclusion was February 13, 2024. (Pl.'s Suppl.  
 10 Br. at 2.)

11      5. As of April 30, 2024, CPT has received 311 Claims, 38 of which were deficient,  
 12 and one was deemed invalid due to being duplicate. (Pl.'s Suppl. Br. at 2; Suppl. Decl. of Carole  
 13 Thompson, "Suppl. Thompson Decl., Dkt. No. 81-1 ¶ 4.) CPT addressed the 38 deficient claims  
 14 by sending claimants a letter providing instructions on how to cure the deficiency. (Suppl.  
 15 Thompson Decl. ¶ 6.) Currently, there are 272 members of the Settlement Class who will receive  
 16 a benefit from a Settlement Claim. (Pl.'s Suppl. Br. at 2; Suppl. Thompson Decl. ¶ 6.) The deadline  
 17 for opting out has passed and one Settlement Class Member has done so. (Suppl. Thompson Decl.  
 18 ¶ 8.) One Settlement Class Member submitted a timely written objection to the Court<sup>1</sup> and none  
 19 appeared in person at the Final Approval Hearing to object. There was an adequate interval  
 20 between mailing of the Notice and the deadline to permit Settlement Class members to choose  
 21 what to do and act on their decision.

22      6. Thus, the Court finds that the notice satisfied the notice requirements of Rule 23,  
 23 adequately advised class members of their rights under the settlement agreement, met the  
 24 requirements of due process, and complied with the Court's order regarding court notice. The form  
 25 of notice fairly, plainly, accurately, and reasonably provided class members with all required  
 26 information, including (among other things): (1) a summary of the lawsuit and claims asserted; (2)

27  
 28      <sup>1</sup> The Court notes that the sole objection was based on skepticism as to the merits of the complaint, rather than the  
 settlement terms. (See Dkt. No. 76.)

1     a clear definition of the class; (3) a description of the material terms of the settlement, including  
 2     the estimated payment; (4) a disclosure of the release of the claims; (5) an explanation of class  
 3     members' opt-out rights, a date by which they must opt out, and information about how to do so;  
 4     (6) the date and location of the final fairness hearing; and (7) the identity of class counsel and the  
 5     provisions for attorney's fees and costs.

### 6                      **Fairness of the Settlement**

7         7.         The Agreement is entitled to a presumption of fairness. *Leonardo's Pizza by the*  
 8     *Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044, 125 S.Ct. 2277, 161 L. Ed. 2d 1080 (2005) (a  
 9     “presumption of fairness, adequacy and reasonableness may attach to a class settlement reached  
 10    in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”)  
 11    (quoted Manual for Complex Litigation, Third § 30.42 (1995)). There has been no collusion  
 12    between the parties in reaching the proposed settlement.

13         8.         Plaintiff’s investigation and discovery were sufficient to allow the Court and  
 14    counsel to act intelligently.

15         9.         Counsel for both parties are experienced in similar data breach class action  
 16    litigation. All counsel recommended approval of the Agreement.

17         10.        The consideration to be given to the Settlement Class Members under the terms of  
 18    the Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the  
 19    claims asserted in this action and is fair, reasonable and adequate compensation for the release of  
 20    Settlement Class Members’ claims, given the uncertainties and risks of the litigation and the delays  
 21    which would ensue from continued prosecution of the action.

22         11.        The proposed Agreement is approved as fair, adequate and reasonable and is in the  
 23    best interests of Settlement Class Members.

### 24                      **Attorneys’ Fees/Expenses**

25         “[T]he court may award reasonable attorney’s fees and nontaxable costs that are authorized  
 26    by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The Ninth Circuit has found, however,  
 27    that courts still “have an independent obligation to ensure that the award, like the settlement itself,

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1     is reasonable, even if the parties have already agreed to an amount.” *In re Bluetooth Headset Prods.*  
 2     *Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

3                 12.     The Agreement provides for (and Class Counsel seeks) an award of up to \$198,500  
 4     to Class Counsel as attorneys’ fees and expenses in this action. (Pl.’s Mot. at 18.) Where a  
 5     settlement, “produces a common fund for the benefit of the entire class, courts have discretion to  
 6     employ either the lodestar method or the percentage-of-recovery method.” *In re Bluetooth*, 654  
 7     F.3d at 942. Under the percentage method, “courts typically calculate 25% of the fund as the  
 8     ‘benchmark’ for a reasonable fee award . . . .” *Id.* This proposed award comprises less than 25%  
 9     of the Settlement’s total value. (Pl.’s Mot. at 18.) This was negotiated separately from and will be  
 10    paid separately and independently from the monies paid to Settlement Class Members for their  
 11    claims. As such, this award will not affect the amount of money any Settlement Class Member  
 12    will receive for their claims, and the fact that the total award is less than 25% of the Settlement  
 13    Fund makes it presumptively reasonable.

14                 13.     Accordingly, the award of attorneys’ fees and reimbursement of litigation expenses  
 15    are reasonable, in light of the contingent nature of Class Counsel’s work, the substantial amount  
 16    of work actually performed such that Class Counsel will not receive a windfall incommensurate  
 17    with the time and effort dedicated to the case, the risks assumed, the results achieved by Class  
 18    Counsel and due to the significant amount of work Class Counsel anticipates post-final approval  
 19    of the settlement.

20                 **Administration Fees**

21                 14.     The parties selected CPT Group (“CPT”) to act as the Claims Administrator. (Pl.’s  
 22    Mot. for Prelim. Approval, Dkt. No. 56 at 5; Decl. of Scott E. Cole ISO Pl.’s Mot. for Prelim.  
 23    Approval, “8/25/23 Cole Decl.”, Dkt. No. 56-1 ¶ 32.) CPT submitted a competitive bid of a flat  
 24    fee of \$40,000, which shall be paid by Defendant separately, and will not affect the Settlement  
 25    Fund. (8/25/23 Cole Decl. ¶ 32; Pl.’s Mot. for Final Approval at 19.)

26                 15.     Since the Court finds that the notice process was sufficient, it approves CPT’s costs  
 27    of \$40,000, which shall be paid by Defendant separately and not affect the Settlement Fund.

28     //

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1                   **Service Award**

2         16. The Agreement provides for a Service Award of up to \$1,500 for Representative  
 3 Plaintiff Jami Zucchero, subject to the Court's approval. This was negotiated separately from and  
 4 will be paid separately and independently from the monies paid to Settlement Class Members for  
 5 their claims.

6         17. Service awards to named plaintiffs are "fairly typical in class action cases."  
 7 Rodriguez v. W Publ'g Corp., 563 F.3d 948, 958 (9th Cir. 2009). "Such awards are discretionary  
 8 and are intended to compensate class representatives for work done on behalf of the class, to make  
 9 up for financial or reputational risk undertaken in bringing the action." *Id.* (internal citation  
 10 omitted). Courts in this district generally find service awards of \$5,000 to be reasonable. See  
 11 Harris v. Vector Mktg. Corp., Case No. 08-cv-5198-EMC, 2012 WL 381202, at \*7 (N.D. Cal. Feb.  
 12 6, 2012). The Court finds this Service Award reasonable considering the risks and burdens  
 13 undertaken by Representative Plaintiff in this action and for her time and effort in bringing and  
 14 prosecuting this matter on behalf of the Settlement Class.

15                   **IT IS HEREBY ORDERED THAT:**

16         1. The Settlement Class is certified for the purposes of settlement only. The Settlement  
 17 Class is hereby defined as:

18         All individuals within the United States whose name and personal payment card  
 19 information was potentially exposed to unauthorized third-parties as a result of the  
 20 Data Security Incident that occurred between approximately February to October  
 21 of 2021.

22         2. Plaintiff's motion for final approval is GRANTED, and the Agreement is hereby  
 23 finally approved as fair, reasonable, adequate and in the best interest of the Settlement Class.

24         3. Class Counsel are awarded attorneys' fees in the amount of \$198,500, inclusive of  
 25 litigation costs. Class Counsel shall not seek or obtain any other compensation or reimbursement  
 26 from Defendant, Plaintiff or members of the Settlement Class. Per the terms of the settlement  
agreement, this shall be paid by Defendant separately, and shall not affect the amount of the  
 27 Settlement Fund.

1       4. Payment of a Service Award in the amount of \$1,500 to Plaintiff Jami Zucchero.  
2 Per the terms of the settlement agreement, this shall be paid by Defendant separately, and shall not  
3 affect the amount of the Settlement Fund.

4       5. CPT Group is awarded \$40,000 for settlement administration costs to be paid by  
5 Defendant separately.

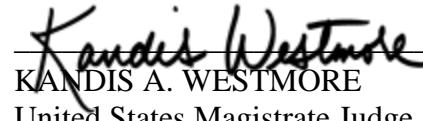
6       6. After entry of this Order and Final Judgment, the Court shall retain jurisdiction to  
7 construe, interpret, implement and enforce the Agreement and this Judgment, to hear and resolve  
8 any contested challenge to a claim for settlement benefits and to supervise and adjudicate any  
9 dispute arising from or in connection with the distribution of settlement benefits.

10      7. In accordance with the Northern District's Procedural Guidance for Class Action  
11 Settlements, within 21 days after all funds have been paid to class members, the parties shall file  
12 a Post-Distribution Accounting (and post it on the settlement website), which provides the total  
13 settlement fund, the total number of class members, the total number of class members to whom  
14 notice was sent and not returned as undeliverable, the number and percentage of claim forms  
15 submitted, the number and percentage of opt-outs, the number and percentage of objections, the  
16 average, median, maximum, and minimum recovery per claimant, the method(s) of notice and the  
17 method(s) of payment to class members, the number and value of checks not cashed, the  
18 administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the  
19 settlement fund, plaintiffs' counsel's updated lodestar total, and the lodestar multiplier. If the  
20 parties believe that a compliance hearing is necessary, they may file a stipulation or administrative  
21 motion requesting that one be set on the Court's regular law and motion calendar.

22      The Clerk shall close the case, and the Court will enter separate judgment.

23      IT IS SO ORDERED.

24 Dated: May 21, 2024

  
KANDIS A. WESTMORE  
United States Magistrate Judge